

AMENDED IN ASSEMBLY JUNE 14, 2004

SENATE BILL

No. 1543

Introduced by Senator Figueroa

February 19, 2004

An act to amend Sections 5000~~and~~, 5015.6~~of~~, 5076, 5100, 5109, and 5134 of, to amend, repeal, and add Sections 5050 and 5088 of, to add Sections 5025.2, 5025.3, 5063.3, and 22252.1 to, and to add Article 5.1 (commencing with Section 5096) and Article 6.5 (commencing with Section 5116) to Chapter 1 of Division 3 of, the Business and Professions Code, relating to~~accountancy~~ professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1543, as amended, Figueroa. California Board of Accountancy.

(1) Existing law provides for the licensing and regulation of accountants by the~~State~~ California Board of Accountancy in the Department of Consumer Affairs. The provisions creating the board, specifying the board's composition, and authorizing the board to appoint an executive officer become inoperative on July 1, 2005, and are repealed on January 1, 2006.

This bill would change these dates to ~~unspecified dates~~ provide that the provisions become inoperative on July 1, 2011, and are repealed on January 1, 2012. The bill would require the Department of Finance, notwithstanding specified provisions in the Budget Act, to authorize up to \$2,000,000 dollars in additional expenditures for the board's enforcement and litigation activities. The bill would require funds for these expenditures to be payable from the Accountancy Fund, which is a continuously appropriated fund. The bill would authorize funds to be encumbered in any fiscal year in which the board enters into a contract

for litigation or enforcement purposes. The bill would require funds encumbered for these purposes to be continuously appropriated. The bill would enact provisions authorizing an individual whose principal place of business is not in this state, and who has a valid and current license, certificate, or permit to practice public accountancy from another state, to engage in the practice of public accountancy in this state under certain conditions. The bill would also prohibit a licensed accountant from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission. The bill would authorize the board to assess specified administrative penalties and would require fees from those penalties to be deposited in the Accountancy Fund.

(2) Existing law requires a tax preparer, prior to rendering any tax preparation service, to provide a customer with specified information in writing. A violation of the laws regulating tax preparers is a crime.

This bill would prohibit a tax preparer from disclosing confidential information concerning a client or a prospective client without obtaining the client's written permission.

Because a violation of the bill by a tax preparer would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5000 of the Business and Professions
- 2 Code is amended to read:
- 3 5000. There is in the Department of Consumer Affairs the
- 4 California Board of Accountancy, which consists of 15 members,
- 5 seven of whom shall be licensees, and eight of whom shall be
- 6 public members who shall not be licentiates of the board or
- 7 registered by the board. The board has the powers and duties
- 8 conferred by this chapter.



The Governor shall appoint four of the public members, and the seven licensee members as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint two public members. In appointing the seven licensee members, the Governor shall appoint members representing a cross section of the accounting profession with at least two members representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become inoperative on July 1, ~~2011~~, and as of January 1, ~~2012~~, is repealed, unless a later enacted statute, that becomes effective on or before January 1, ~~2012~~, deletes or extends the dates on which this section becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to reports or studies specified in this chapter and those issues identified by the Joint ~~Legislative Sunset Review~~ Committee on Boards, Commissions, and Consumer Protection and the board regarding the implementation of new licensing requirements.

SEC. 2. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, ~~2011~~, and, as of January 1, ~~2012~~, is repealed, unless a later enacted statute, which becomes effective on or before January 1, ~~2012~~, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 5025.2 is added to the Business and Professions Code, to read:

5025.2. (a) *The Legislature finds that there are occasions when the California Board of Accountancy urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient*

1 expenditure authority to obtain the necessary additional resources
2 for urgent litigation and enforcement matters, the board is unable
3 to adequately protect the public. Therefore, it is the intent of the
4 Legislature that, apart from, and in addition to, the expenditure
5 authority that may otherwise be established, the California Board
6 of Accountancy shall be given the increase in its expenditure
7 authority in any given current fiscal year that is authorized by the
8 Department of Finance pursuant to the provisions of subdivision
9 (b) of this section, for costs and services in urgent litigation and
10 enforcement matters, including, but not limited to, costs for
11 professional and consulting services and for the services of the
12 Attorney General and the Office of Administrative Hearings.

13 (b) Notwithstanding Control Section 27.00 of the annual
14 Budget Act, Section 11006 of the Government Code, and the
15 amount listed in the annual Budget Act for expenditure, the
16 Department of Finance shall authorize up to two million dollars
17 (\$2,000,000) in additional expenditures for the California Board
18 of Accountancy upon a showing by the board that those funds are
19 necessary for public protection and that the shortfall was not
20 anticipated. These additional expenditures shall be payable from
21 the Accountancy Fund for purposes of the board's litigation or
22 enforcement activities in any given current fiscal year.

23 SEC. 4. Section 5025.3 is added to the Business and
24 Professions Code, to read:

25 5025.3. (a) Whenever the board enters into a contract for
26 litigation or enforcement purposes, including, but not limited to,
27 contracts pursuant to Section 5025.1, funds may be encumbered in
28 the fiscal year the contract is executed and expended at any time
29 during the subsequent 24 months commencing with the last day of
30 the fiscal year in which the contract is executed.

31 (b) Notwithstanding Section 13340 of the Government Code,
32 funds encumbered for a contract pursuant to subdivision (a) of this
33 section are continuously appropriated without regard to fiscal
34 year; however, the appropriation is limited to the period for which
35 funds are authorized to be encumbered under subdivision (a).

36 SEC. 5. Section 5050 of the Business and Professions Code is
37 amended to read:

38 5050. (a) No person shall engage in the practice of public
39 accountancy in this State unless such person is the holder of a valid
40 permit to practice public accountancy issued by the board;

1 provided, however, that nothing in this chapter shall prohibit a
2 certified public accountant or a public accountant of another state,
3 or any accountant of a foreign country lawfully practicing therein,
4 from temporarily practicing in this State on professional business
5 incident to his regular practice in another state or country.

6 *(b) This section shall become inoperative on January 1, 2006,*
7 *and as of that date is repealed.*

8 SEC. 6. *Section 5050 is added to the Business and Professions*
9 *Code, to read:*

10 5050. *(a) No person shall engage in the practice of public*
11 *accountancy in this state unless the person is the holder of a valid*
12 *permit to practice public accountancy issued by the board or a*
13 *holder of a practice privilege pursuant to Article 5.1 (commencing*
14 *with Section 5096).*

15 *(b) This section shall become operative on January 1, 2006.*

16 SEC. 7. *Section 5063.3 is added to the Business and*
17 *Professions Code, to read:*

18 5063.3. *(a) No confidential information obtained by a*
19 *licensee, in his or her professional capacity, concerning a client or*
20 *a prospective client shall be disclosed by the licensee without the*
21 *written permission of the client or prospective client, except the*
22 *following:*

23 *(1) Disclosures made by a licensee in compliance with a*
24 *subpoena or a summons enforceable by order of a court.*

25 *(2) Disclosures made by a licensee regarding a client or*
26 *prospective client to the extent the licensee reasonably believes it*
27 *is necessary to maintain or defend himself or herself in a legal*
28 *proceeding initiated by the client or prospective client.*

29 *(3) Disclosures made by a licensee in response to an official*
30 *inquiry from a federal or state government regulatory agency.*

31 *(4) Disclosures made by a licensee or a licensee's duly*
32 *authorized representative to another licensee in connection with a*
33 *proposed sale or merger of the licensee's professional practice.*

34 *(5) Disclosures made by a licensee to either of the following:*

35 *(A) Another licensee to the extent necessary for purposes of*
36 *professional consultation.*

37 *(B) Organizations that provide professional standards review*
38 *and ethics or quality control peer review.*

39 *(6) Disclosures made when specifically required by law.*

1 (b) In the event that confidential client information may be
2 disclosed to persons or entities outside the United States of
3 America in connection with the services provided, the licensee
4 shall inform the client and obtain the client's written permission
5 for the disclosure.

6 SEC. 8. Section 5076 of the Business and Professions Code is
7 amended to read:

8 5076. (a) In order to renew its registration, a firm providing
9 attest services, other than a sole proprietor or a small firm as
10 defined in Section 5000, shall complete a peer review prior to the
11 first registration expiration date after January 1, 2006, and no less
12 frequently than every three years thereafter.

13 (b) For purposes of this article, the following definitions apply:

14 (1) "Peer review" means a study, appraisal, or review
15 conducted in accordance with professional standards of the
16 professional work of a licensee or registered firm by another
17 licensee unaffiliated with the licensee or registered firm being
18 reviewed. The peer review shall include, but not be limited to, a
19 review of at least one attest engagement representing the highest
20 level of service performed by the firm and may include an
21 evaluation of other factors in accordance with requirements
22 specified by the board in regulations.

23 (2) "Attest services" include an audit, a review of financial
24 statements, or an examination of prospective financial
25 information, provided, however, "attest services" shall not
26 include the issuance of compiled financial statements.

27 (c) The board shall adopt regulations as necessary to
28 implement, interpret, and make specific the peer review
29 requirements in this section, including, but not limited to,
30 regulations specifying the requirements for the approval of peer
31 review providers, and regulations establishing a peer review
32 oversight committee.

33 (d) The board shall review whether to implement the program
34 specified in this section in light of the changes in federal and state
35 law or regulations or professional standards, and shall report its
36 findings to the Legislature and the department by September 1,
37 ~~2003~~ 2005.

38 SEC. 9. Section 5088 of the Business and Professions Code is
39 amended to read:

1 5088. (a) Any person who is the holder of a valid and
2 unrevoked license as a certified public accountant issued under the
3 laws of any state and who applies to the board for a license as a
4 certified public accountant under the provisions of Section 5087
5 may, after application for licensure and after providing evidence
6 of qualifying continuing education, perform the same public
7 accounting services in this state as a certified public accountant
8 licensed under Section 5092 or 5093 until the time his or her
9 application for a license is granted or rejected.

10 (b) An applicant meeting the requirements of subdivision (a)
11 who certifies that he or she has met the requirements of Section
12 5095 may perform attest services in this state until the time his or
13 her application for a license is granted or rejected.

14 (c) *This section shall remain operative until January 1, 2006,*
15 *and as of that date is repealed.*

16 *SEC. 10. Section 5088 is added to the Business and*
17 *Professions Code, to read:*

18 5088. (a) *Any individual who is the holder of a current and*
19 *valid license as a certified public account issued under the laws of*
20 *any state and who applies to the board for a license as a certified*
21 *public accountant under the provisions of Section 5087 may, until*
22 *the time the application for a license is granted or denied, practice*
23 *public accountancy in this state only under a practice privilege*
24 *during the period the application is pending by virtue of*
25 *maintaining an office or principal place of business, or both, in*
26 *this state. The board may by regulation provide for exemption,*
27 *credit, or proration of fees to avoid duplication of fees.*

28 (b) *This section shall become operative on January 1, 2006.*

29 *SEC. 11. Article 5.1 (commencing with Section 5096) is added*
30 *to Chapter 1 of Division 3 of the Business and Professions Code,*
31 *to read:*

32
33 *Article 5.1. Practice Privileges*
34

35 5096. (a) *An individual whose principal place of business is*
36 *not in this state and who has a valid and current license, certificate*
37 *or permit to practice public accountancy from another state may,*
38 *subject to the conditions and limitations in this article, engage in*
39 *the practice of public accountancy in this state under a practice*

1 *privilege without obtaining a certificate or license under this*
2 *chapter if the individual satisfies one of the following:*

3 (1) *The individual has continually practiced public*
4 *accountancy as a certified public accountant under valid license*
5 *issued by any state for at least four of the last ten years.*

6 (2) *The individual has a license, certificate, or permit from a*
7 *state which has been determined by the board to have education,*
8 *examination, and experience qualifications for licensure*
9 *substantially equivalent to this state's qualifications under Section*
10 *5093.*

11 (3) *The individual possesses education, examination, and*
12 *experience qualifications for licensure which have been*
13 *determined by the board to be substantially equivalent to this*
14 *state's qualifications under Section 5093.*

15 (b) *The board may designate states as substantially equivalent*
16 *under paragraph (2) of subdivision (a) and may accept individual*
17 *qualification evaluations or appraisals conducted by designated*
18 *entities, as satisfying the requirements of paragraph (3) of*
19 *subdivision (a).*

20 (c) *To obtain a practice privilege under this section, an*
21 *individual who meets the requirements of subdivision (a), shall do*
22 *the following:*

23 (1) *In the manner prescribed by board regulation, notify the*
24 *board of the individual's intent to practice.*

25 (2) *Pay a fee as provided in Article 8 (commencing with Section*
26 *5130).*

27 (d) *Except as otherwise provided by this article or by board*
28 *regulation, the practice privilege commences when the individual*
29 *notifies the board, provided the fee is received by the board within*
30 *30 days of that date.*

31 (e) *An individual who holds a practice privilege under this*
32 *article:*

33 (1) *Is subject to the personal and subject matter jurisdiction*
34 *and disciplinary authority of the board and the courts of this state.*

35 (2) *Shall comply with the provisions of this chapter, board*
36 *regulations, and other laws, regulations, and professional*
37 *standards applicable to the practice of public accountancy by the*
38 *licensees of this state and to any other laws and regulations*
39 *applicable to individuals practicing under practice privileges in*
40 *this state except the individual is deemed, solely for the purpose of*

1 *this article, to have met the continuing education requirements and*
2 *ethics examination requirements of this state when such individual*
3 *has met the examination and continuing education requirements*
4 *of the state in which the individual holds the valid license,*
5 *certificate, or permit on which the substantial equivalency is*
6 *based.*

7 (3) *Shall not provide public accountancy services in this state*
8 *from any office located in this state, except as an employee of a firm*
9 *registered in this state. This paragraph does not apply to public*
10 *accountancy services provided to a client at the client's place of*
11 *business or residence.*

12 (4) *Is deemed to have appointed the regulatory agency of the*
13 *state that issued the individual's certificate, license, or permit*
14 *upon which substantial equivalency is based as the individual's*
15 *agent on whom notices, subpoenas or other process may be served*
16 *in any action or proceeding by the board against the individual.*

17 (5) *Shall cooperate with any board investigation or inquiry and*
18 *shall timely respond to a board investigation, inquiry, request,*
19 *notice, demand or subpoena for information or documents and*
20 *timely provide to the board the identified information and*
21 *documents.*

22 (f) *A practice privilege expires one year from the date of the*
23 *notice, unless a shorter period is set by board regulation.*

24 (g) (1) *No individual may practice under a practice privilege*
25 *without prior approval of the board if the individual has, or*
26 *acquires at any time during the term of the practice privilege, any*
27 *disqualifying condition under paragraph (2) of this subdivision.*

28 (2) *Disqualifying conditions include:*

29 (A) *Conviction of any crime other than a minor traffic*
30 *violation.*

31 (B) *Revocation, suspension, denial, surrender or other*
32 *discipline or sanctions involving of any license, permit,*
33 *registration, certificate or other authority to practice any*
34 *profession in this or any other state or foreign country or to*
35 *practice before any state, federal, or local court or agency, or the*
36 *Public Company Accounting Oversight Board.*

37 (C) *Pendency of any investigation, inquiry or proceeding by or*
38 *before any state, federal or local court or agency, including, but*
39 *not limited to, the Public Company Accounting Oversight Board,*
40 *involving the professional conduct of the individual.*

1 (D) Any judgment or arbitration award against the individual
2 involving the professional conduct of the individual in the amount
3 of thirty thousand dollars (\$30,000) or greater.

4 (E) Any other conditions as specified by the board in
5 regulation.

6 (3) The board may adopt regulations exempting specified
7 minor occurrences of the conditions listed in subparagraph (B) of
8 paragraph (2) from being disqualifying conditions under this
9 subdivision.

10 5096.1. (a) Any individual, not a licensee of this state, who
11 is engaged in any act which is the practice of public accountancy
12 in this state, and who has not given notice of intent to practice
13 under practice privileges and paid the fee required pursuant to the
14 provisions of this article, and who has a license, certificate or other
15 authority to engage in the practice of public accountancy in any
16 other state, regardless of whether active, inactive, suspended, or
17 subject to renewal on payment of a fee or completion of an
18 educational or ethics requirement, is:

19 (1) Deemed to be practicing public accountancy unlawfully in
20 this state.

21 (2) Subject to the personal and subject matter jurisdiction and
22 disciplinary authority of the board and the courts of this state to
23 the same extent as a holder of a valid practice privilege.

24 (3) Deemed to have appointed the regulatory agency of the
25 state that issued the individual's certificate or license as the
26 individual's agent on whom notice, subpoenas, or other process
27 may be served in any action or proceeding by the board against the
28 individual.

29 (b) The board may prospectively deny a practice privilege to
30 any individual who has violated this section or implementing
31 regulations or committed any act which would be grounds for
32 discipline against the holder of a practice privilege.

33 5096.2. (a) Practice privileges may be denied for failure to
34 qualify under or comply with the provisions of this article or
35 implementing regulations, or for any act that if committed by an
36 applicant for licensure would be grounds for denial of a license
37 under Section 480 or if committed by a licensee would be grounds
38 for discipline under Section 5100, or for any act committed outside
39 of this state that would be a violation if committed within this state.

1 ***(b) The board may deny practice privileges using either of the***
2 ***following procedures:***

3 ***(1) Notifying the individual in writing of all of the following:***

4 ***(A) That the practice privilege is denied.***

5 ***(B) The reasons for denial.***

6 ***(C) The earliest date on which the individual is eligible for a***
7 ***practice privilege.***

8 ***(D) That the individual has a right to appeal the notice and***
9 ***request a hearing under the provisions of the Administrative***
10 ***Procedure Act if a written notice of appeal and request for hearing***
11 ***is made within 60 days.***

12 ***(E) That, if the individual does not submit a notice of appeal***
13 ***and request for hearing within 60 days, the board's action set forth***
14 ***in the notice shall become final.***

15 ***(2) Filing a statement of issues under the Administrative***
16 ***Procedure Act.***

17 ***(c) An individual who had been denied a practice privilege may***
18 ***apply for a new practice privilege not less than one year after the***
19 ***effective date of the notice or decision denying the practice***
20 ***privilege unless a longer time period, not to exceed three years, is***
21 ***specified in the notice or decision denying the practice privilege.***

22 ***5096.3. (a) Practice privileges are subject to revocation,***
23 ***suspension, fines or other disciplinary sanctions for any conduct***
24 ***that would be grounds for discipline against a licensee of the board***
25 ***or for any conduct in violation of this article or regulations***
26 ***implementing this article.***

27 ***(b) Practice privileges are subject to discipline during any time***
28 ***period in which they are valid, under administrative suspension,***
29 ***or expired.***

30 ***(c) The board may recover its costs pursuant to Section 5107 as***
31 ***part of any disciplinary proceeding against the holder of a practice***
32 ***privilege.***

33 ***(d) An individual whose practice privilege has been revoked***
34 ***may apply for a new practice privilege not less than one year after***
35 ***the effective date of the board's decision revoking the individual's***
36 ***practice privilege unless a longer time period, not to exceed three***
37 ***years, is specified in the board's decision revoking the practice***
38 ***privilege.***

39 ***(e) The provisions of the Administrative Procedure Act,***
40 ***including, but not limited to, the commencement of a disciplinary***

1 *proceeding by the filing of an accusation by the board shall apply*
2 *under this article.*

3 5096.4. (a) *The right of an individual to practice in this state*
4 *under a practice privilege may be administratively suspended at*
5 *any time by an order issued by the board or its executive officer,*
6 *without prior notice or hearing, for the purpose of conducting a*
7 *disciplinary investigation, proceeding, or inquiry concerning the*
8 *representations made in the notice, the individual's competence or*
9 *qualifications to practice under practice privileges, failure to*
10 *timely respond to a board inquiry or request for information or*
11 *documents, or under other conditions and circumstances provided*
12 *for by board regulation.*

13 (b) *The administrative suspension order is immediately*
14 *effective when mailed to the individual's address of record or agent*
15 *for notice and service as provided for in this article.*

16 (c) *The administrative suspension order shall contain the*
17 *following:*

18 (1) *The reason for the suspension.*

19 (2) *A statement that the individual has the right, within 30 days,*
20 *to appeal the administrative suspension order and request a*
21 *hearing.*

22 (3) *A statement that any appeal hearing will be conducted*
23 *under the provisions of the Administrative Procedure Act*
24 *applicable to individuals who are denied licensure, including the*
25 *filing of a statement of issues by the board setting forth the reasons*
26 *for the administrative suspension of practice privileges and*
27 *specifying the statutes and rules with which the individual must*
28 *show compliance by producing proof at the hearing and in*
29 *addition any particular matters that have come to the attention of*
30 *the board and that would authorize the administrative suspension,*
31 *or the denial of practice privileges.*

32 (d) *The burden is on the holder of the suspended practice*
33 *privilege to establish both qualification and fitness to practice*
34 *under practice privileges.*

35 (e) *The administrative suspension shall continue in effect until*
36 *terminated by an order of the board or the executive officer or*
37 *expiration of the practice privilege under administrative*
38 *suspension.*

39 (f) *Administrative suspension is not discipline and shall not*
40 *preclude any individual from applying for a license to practice*

1 *public accountancy in this state or from applying for a new*
2 *practice privilege upon expiration of the one under administrative*
3 *suspension, except that the new practice privilege shall not be*
4 *effective until approved by the board.*

5 *(g) Notwithstanding any administrative suspension, a practice*
6 *privilege expires one year from the date of notice unless a shorter*
7 *period is set by board regulation.*

8 *(h) Proceedings to appeal an administrative suspension order*
9 *may be combined or coordinated with proceedings for denial or*
10 *discipline of a practice privilege.*

11 *5096.5. Notwithstanding any other provision of this article,*
12 *an individual may not sign any attest report pursuant to a practice*
13 *privilege unless the individual meets the experience requirements*
14 *of Section 5095 and completes any continuing education or other*
15 *conditions required by the board regulations implementing this*
16 *article.*

17 *5096.6. In addition to the authority otherwise provided for by*
18 *this code, the board may delegate to the executive officer the*
19 *authority to issue any notice or order provided for in this article*
20 *and to act on behalf of the board, including, but not limited to,*
21 *issuing a notice of denial of a practice privilege and an interim*
22 *suspension order, subject to the right of the individual to timely*
23 *appeal and request a hearing as provided for in this article.*

24 *5096.7. Except as otherwise provided in this article, the*
25 *following definitions apply:*

26 *(a) Anywhere the term “license,” “licensee,” “permit,” or*
27 *“certificate” is used in this chapter or Division 1.5 (commencing*
28 *with Section 475), it shall include persons holding practice*
29 *privileges under this article, unless otherwise inconsistent with the*
30 *provisions of the article.*

31 *(b) Any notice of practice privileges under this article and*
32 *supporting documents is deemed an application for licensure for*
33 *purposes of the provisions of this code, including, but not limited*
34 *to, the provisions of this chapter and the provisions of Division 1.5*
35 *(commencing with Section 475) related to the denial, suspension*
36 *and revocation of licenses.*

37 *(c) Anywhere the term “employee” is used in this article it shall*
38 *include, but is not limited to, partners, shareholders, and other*
39 *owners.*

1 5096.8. *In addition to the authority otherwise provided by this*
2 *code, all investigative powers of the board, including those*
3 *delegated to the executive officer, shall apply to investigations*
4 *concerning compliance with, or actual or potential violations of,*
5 *the provisions of this article or implementing regulations,*
6 *including, but not limited to, the power to conduct investigations*
7 *and hearings by the executive officer under Section 5103 and to*
8 *issuance of subpoenas under Section 5108.*

9 5096.9. *The board is authorized to adopt regulations to*
10 *implement, interpret, or make specific the provisions of this article.*

11 5096.10. *The provisions of this article shall only be operative*
12 *if commencing July 1, 2005, and continuing during the period*
13 *provided in Section 5096.11, there is an appropriation from the*
14 *Accountancy Fund in the annual Budget Act to fund the activities*
15 *in the article and sufficient hiring authority is granted pursuant to*
16 *a budget change proposal to the board to provide staffing to*
17 *implement this article.*

18 5096.11. *This article shall become operative on January 1,*
19 *2006. It shall remain in effect only until January 1, 2011, and as*
20 *of that date is repealed, unless a later enacted statute, which*
21 *becomes effective on or before January 1, 2011, deletes or extends*
22 *that date.*

23 SEC. 12. *Section 5100 of the Business and Professions Code*
24 *is amended to read:*

25 5100. After notice and hearing the board may revoke,
26 suspend, or refuse to renew any permit or certificate granted under
27 Article 4 (commencing with Section 5070) and Article 5
28 (commencing with Section 5080), or may censure the holder of
29 that permit or certificate for unprofessional conduct that includes,
30 but is not limited to, one or any combination of the following
31 causes:

32 (a) Conviction of any crime substantially related to the
33 qualifications, functions and duties of a certified public accountant
34 or a public accountant.

35 (b) A violation of Section 478, 498, or 499 dealing with false
36 statements or omissions in the application for a license, in
37 obtaining a certificate as a certified public accountant, in obtaining
38 registration under this chapter, or in obtaining a permit to practice
39 public accountancy under this chapter.

1 (c) Dishonesty, fraud, gross negligence, or repeated negligent
2 acts committed in the same or different engagements, for the same
3 or different clients, or any combination of engagements or clients,
4 each resulting in a violation of applicable professional standards
5 that indicate a lack of competency in the practice of public
6 accountancy or in the performance of the bookkeeping operations
7 described in Section 5052.

8 (d) Cancellation, revocation, or suspension of a certificate or
9 other authority to practice as a certified public accountant or a
10 public accountant, refusal to renew the certificate or other
11 authority to practice as a certified public accountant or a public
12 accountant, or any other discipline by any other state or foreign
13 country.

14 (e) Violation of Section 5097.

15 (f) Violation of Section 5120.

16 (g) Willful violation of this chapter or any rule or regulation
17 promulgated by the board under the authority granted under this
18 chapter.

19 (h) Suspension or revocation of the right to practice before any
20 governmental body or agency.

21 (i) Fiscal dishonesty or breach of fiduciary responsibility of
22 any kind.

23 (j) Knowing preparation, publication, or dissemination of
24 false, fraudulent, or materially misleading financial statements,
25 reports, or information.

26 (k) Embezzlement, theft, misappropriation of funds or
27 property, or obtaining money, property, or other valuable
28 consideration by fraudulent means or false pretenses.

29 (l) The imposition of any discipline, penalty, or sanction on a
30 registered public accounting firm or any associated person of such
31 firm, or both, or on any other holder of a permit, certificate,
32 license, or other authority to practice in this state, by the Public
33 Company Accounting Oversight Board or the United States
34 Securities and Exchange Commission, or their designees under the
35 Sarbanes-Oxley Act of 2002 or other federal legislation.

36 (m) *Unlawfully engaging in the practice of public accountancy*
37 *in another state.*

38 SEC. 13. *Section 5109 of the Business and Professions Code*
39 *is amended to read:*

1 5109. The expiration, cancellation, forfeiture, or suspension
2 of a license, *practice, privilege, or other authority to practice*
3 *public accountancy* by operation of law or by order or decision of
4 the board or a court of law, or the voluntary surrender of a license
5 by a licensee shall not deprive the board of jurisdiction to proceed
6 with any investigation of or action or disciplinary proceeding
7 against the licensee, or to render a decision suspending or revoking
8 the license.

9 SEC. 14. Article 6.5 (commencing with Section 5116) is added
10 to Chapter 1 of Division 3 of the Business and Professions Code,
11 to read:

12
13 Article 6.5. Administrative Penalties
14

15 5116. (a) The board, after appropriate notice and an
16 opportunity for hearing, may order any licensee or applicant for
17 licensure or examination to pay an administrative penalty as
18 provided in this article as part of any disciplinary proceeding or
19 other proceeding provided for in this chapter.

20 (b) The board may assess administrative penalties under one or
21 more provisions of this article. However, the total administrative
22 penalty to be paid by the licensee shall not exceed the amount of
23 the highest administrative penalty authorized by this article.

24 (c) The board shall adopt regulations to establish criteria for
25 assessing administrative penalties based upon factors, including,
26 but not limited to, actual and potential consumer harm, nature and
27 severity of the violation, the role of the person in the violation, the
28 person's ability to pay the administrative penalty, and the level of
29 administrative penalty necessary to deter future violations of this
30 chapter.

31 (d) Administrative penalties assessed under this article shall be
32 in addition to any other penalties or sanctions imposed on the
33 licensee or other person, including, but not limited to, license
34 revocation, license suspension, denial of the application for
35 licensure, denial of the petition for reinstatement, or denial of
36 admission to the licensing examination. Payment of these
37 administrative penalties may be included as a condition of
38 probation when probation is ordered.

39 (e) All administrative penalties collected under this article
40 shall be deposited in the Accountancy Fund.

1 5116.1. *In accordance with Section 5116 and applicable*
2 *regulations, except as provided in Section 5116.2, any licensee*
3 *who violates any provision of this chapter may be assessed an*
4 *administrative penalty of not more than five thousand dollars*
5 *(\$5,000) for the first violation and not more than ten thousand*
6 *dollars (\$10,000) for each subsequent violation.*

7 5116.2. *In accordance with Section 5116 and applicable*
8 *regulations, any licensee who violates subdivision (a), (c), (i), (j)*
9 *or (k) of Section 5100 may be assessed an administrative penalty*
10 *of not more than one million dollars (\$1,000,000) for the first*
11 *violation and not more than five million dollars (\$5,000,000) for*
12 *any subsequent violation, except that a licensee who is a natural*
13 *person may be assessed an administrative penalty of not more than*
14 *fifty thousand dollars (\$50,000) for the first violation and not more*
15 *than one hundred thousand dollars (\$100,000) for any subsequent*
16 *violation.*

17 5116.3. *In accordance with Section 5116 and applicable*
18 *regulations, any person who is found to have cheated or subverted*
19 *or attempted to subvert or cheat on any licensing examination or*
20 *who conspired with or aided or abetted any other person to cheat,*
21 *subvert or attempt to subvert any examination may be assessed an*
22 *administrative penalty of not more than five thousand dollars*
23 *(\$5,000) for the first violation and not more than ten thousand*
24 *dollars (\$10,000) for each subsequent violation.*

25 5116.4. *(a) The board's executive officer may request*
26 *assessment of an administrative penalty in any disciplinary or*
27 *other proceeding provided in this chapter or in any notice to an*
28 *applicant pursuant to Section 5112.*

29 ***(b) The administrative penalty pursuant to subdivision (a) shall***
30 *become final unless contested within the time period provided for*
31 *the filing of a notice of appeal, for the filing of a notice of defense,*
32 *or for requesting a hearing in the proceeding.*

33 ***(c) Nothing in this article shall prevent an administrative***
34 *penalty from being included in a final contested or default decision*
35 *of the board or in a notice issued pursuant to Section 5112 once the*
36 *time period for requesting a hearing has expired.*

37 5116.5. *The board may obtain a judgment in any court of*
38 *competent jurisdiction ordering the payment of any final*
39 *administrative penalty assessed by the board pursuant to this*

1 *article upon the filing of a certified copy of the board's final*
2 *decision or notice issued pursuant to Section 5112.*

3 *5116.6. Anywhere the term "licensee" is used in the article it*
4 *shall include certified public accountants, public accountants,*
5 *partnerships, corporations, holders of practice privileges, other*
6 *persons licensed, registered, or otherwise authorized to practice*
7 *public accountancy under this chapter, and persons who are in*
8 *violation of any provision of Article 5.1 (commencing with Section*
9 *5096).*

10 *SEC. 15. Section 5134 of the Business and Professions Code*
11 *is amended to read:*

12 5134. The amount of fees prescribed by this chapter is as
13 follows:

14 (a) The fee to be charged to each applicant for the certified
15 public accountant examination shall be fixed by the board at an
16 amount to equal the actual cost to the board of the purchase or
17 development of the examination, plus the estimated cost to the
18 board of administering the examination and shall not exceed six
19 hundred dollars (\$600). The board may charge a reexamination fee
20 equal to the actual cost to the board of the purchase or development
21 of the examination or any of its component parts, plus the
22 estimated cost to the board of administering the examination and
23 not to exceed seventy-five dollars (\$75) for each part that is subject
24 to reexamination.

25 (b) The fee to be charged to out-of-state candidates for the
26 certified public accountant examination shall be fixed by the board
27 at an amount equal to the estimated cost to the board of
28 administering the examination and shall not exceed six hundred
29 dollars (\$600) per candidate.

30 (c) The application fee to be charged to each applicant for
31 issuance of a certified public accountant certificate shall be fixed
32 by the board at an amount equal to the estimated administrative
33 cost to the board of processing and issuing the certificate and shall
34 not exceed two hundred fifty dollars (\$250).

35 (d) The application fee to be charged to each applicant for
36 issuance of a certified public accountant certificate by waiver of
37 examination shall be fixed by the board at an amount equal to the
38 estimated administrative cost to the board of processing and
39 issuing the certificate and shall not exceed two hundred fifty
40 dollars (\$250).



1 (e) The fee to be charged to each applicant for registration as
2 a partnership or professional corporation shall be fixed by the
3 board at an amount equal to the estimated administrative cost to the
4 board of processing and issuing the registration and shall not
5 exceed two hundred fifty dollars (\$250).

6 (f) The board shall fix the biennial renewal fee so that, together
7 with the estimated amount from revenue other than that generated
8 by subdivisions (a) to (e), inclusive, the reserve balance in the
9 board's contingent fund shall be equal to approximately ~~six~~ nine
10 months of annual authorized expenditures. Any increase in the
11 renewal fee made after July 1, 1990, shall be effective upon a
12 determination by the board, by regulation adopted pursuant to
13 subdivision (k), that additional moneys are required to fund
14 authorized expenditures other than those specified in subdivisions
15 (a) to (e), inclusive, and maintain the board's contingent fund
16 reserve balance equal to ~~six~~ nine months of estimated annual
17 authorized expenditures in the fiscal year in which the
18 expenditures will occur. The biennial fee for the renewal of each
19 of the permits to engage in the practice of public accountancy
20 specified in Section 5070 shall not exceed two hundred fifty
21 dollars (\$250).

22 (g) The delinquency fee shall be 50 percent of the accrued
23 renewal fee.

24 (h) The initial permit fee is an amount equal to the renewal fee
25 in effect on the last regular renewal date before the date on which
26 the permit is issued, except that, if the permit is issued one year or
27 less before it will expire, then the initial permit fee is an amount
28 equal to 50 percent of the renewal fee in effect on the last regular
29 renewal date before the date on which the permit is issued. The
30 board may, by regulation, provide for the waiver or refund of the
31 initial permit fee where the permit is issued less than 45 days
32 before the date on which it will expire.

33 (i) *On and after January 1, 2006, the annual fee to be charged*
34 *an individual for a practice privilege pursuant to Section 5096*
35 *shall be fixed by the board at an amount not to exceed 50 percent*
36 *of the biennial renewal fee provided in subdivision (f).*

37 (j) The fee to be charged for the certification of documents
38 evidencing passage of the certified public accountant
39 examination, the certification of documents evidencing the grades
40 received on the certified public accountant examination, or the

1 certification of documents evidencing licensure shall be
2 twenty-five dollars (\$25).

3 ~~(j)~~

4 (k) The actual and estimated costs referred to in this section
5 shall be calculated every two years using a survey of all costs
6 attributable to the applicable subdivision.

7 ~~(k)~~

8 (l) Upon the effective date of this section the board shall fix the
9 fees in accordance with the limits of this section and, on and after
10 July 1, 1990, any increase in any fee fixed by the board shall be
11 pursuant to regulation duly adopted by the board in accordance
12 with the limits of this section.

13 ~~(l)~~

14 (m) Fees collected pursuant to subdivisions (a) to (e), inclusive,
15 shall be fixed by the board in amounts necessary to recover the
16 actual costs of providing the service for which the fee is assessed,
17 as projected for the fiscal year commencing on the date the fees
18 become effective.

19 *SEC. 16. Section 22252.1 is added to the Business and*
20 *Professions Code, to read:*

21 *22252.1. (a) No confidential information obtained by a tax*
22 *preparer, in his or her professional capacity, concerning a client*
23 *or a prospective client shall be disclosed by the licensee without*
24 *the written permission of the client or prospective client, except for*
25 *the following:*

26 *(1) Disclosures made by a tax preparer in compliance with a*
27 *subpoena or a summons enforceable by order of a court.*

28 *(2) Disclosures made by a tax preparer regarding a client or*
29 *prospective client to the extent the tax preparer reasonably*
30 *believes it is necessary to maintain or defend himself or herself in*
31 *a legal proceeding initiated by the client or prospective client.*

32 *(3) Disclosures made by a tax preparer in response to an*
33 *official inquiry from a federal or state government regulatory*
34 *agency.*

35 *(4) Disclosures made by a tax preparer or to a tax preparer's*
36 *duly authorized representative to another tax preparer in*
37 *connection with a proposed sale or merger of the tax preparer's*
38 *professional practice.*

39 *(5) Disclosures made by a tax preparer to either of the*
40 *following:*

1 (A) Another tax preparer to the extent necessary for purposes
2 of professional consultation.

3 (B) Organizations that provide professional standards review
4 and ethics or quality control peer review.

5 (6) Disclosures made when specifically required by law.

6 (b) In the event that confidential client information may be
7 disclosed to persons or entities outside the United States of
8 America in connection with the services provided, the tax preparer
9 shall inform the client and obtain the client's written permission
10 for the disclosure.

11 SEC. 17. No reimbursement is required by this act pursuant
12 to Section 6 of Article XIII B of the California Constitution
13 because the only costs that may be incurred by a local agency or
14 school district will be incurred because this act creates a new crime
15 or infraction, eliminates a crime or infraction, or changes the
16 penalty for a crime or infraction, within the meaning of Section
17 17556 of the Government Code, or changes the definition of a
18 crime within the meaning of Section 6 of Article XIII B of the
19 California Constitution.